

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 974 of 1999

in

SPECIAL CIVIL APPLICATION No 7728 of 1998

with

CIVIL APPLICATION NO 9134 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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ASST REGIONAL DIRECTOR

Versus

SHIVJISINGH CHANDRADEOSINGH  
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Appearance:

MS. SIDDHIBEN TALATI ASSTT. G.P. for Appellant  
MR RV DESAI for Respondent No. 1  
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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE H.K.RATHOD

Date of decision: 28/10/1999

(Per : H.K.Rathod,J.)

ORAL JUDGEMENT

Admit. Mr. Desai, the learned advocate appearing for the respondent workman waives service of notice of admission on behalf of the respondent herein.

By this appeal under clause 15 of the Letters Patent, the appellant is challenging the judgment and order dated 5.11.1998 passed by the learned Single Judge in aforesaid petition. The facts of the petition filed by the respondent, in short, are that the respondent has filed the aforesaid petition on the ground that his daughter Anjukumari aged about 8 years developed complication in the chamber of heart because of defect in the heart valve. Therefore, she was admitted in the Surat Civil Hospital in the month of September, 1996. The respondent-original petitioner was advised to admit his daughter at Ahmedabad and also advised to go for operation. The costs of the operation was estimated at Rs. 22,256.00. Therefore, under the provisions of the ESI Act, the petitioner had approached the respondent No. 2 Assistant Regional Director, ESI Corporation, Baroda for payment of the costs of the operation in accordance with the provisions of the ESI Act. The respondent No.2, under his letter dated 31st July, 1997, advised the petitioner to incur the expenses at his own and then he should claim for reimbursement. The daughter of the petitioner was admitted on 22nd August, 1997 and she was discharged on 8th September, 1997 and she was operated on 27th August, 1997. According to the petitioner, with great difficulty, he could arrange for the amount for operation and thereafter, the petitioner approached the original respondent no.2 under his letter dated 20th April, 1998 for payment of the amount. Said letter was replied by the respondent no. 2 that the claim of the petitioner for reimbursement has been forwarded to the Director of Medical Services ESI Scheme, Ahmedabad for further necessary action and, thereafter, the aforesaid petition was filed by the petitioner before the learned Single Judge of this Court.

In the said petition, in response to the notice issued by the learned Single Judge, no reply was filed by the respondents and, therefore, after considering the facts on record, the learned Single Judge has passed the impugned order dated 5th November, 1998. The said petition was admitted and decided on the even day by the impugned judgment and order. The learned Single Judge, under the impugned judgment and order, allowed the said petition directing the respondent Corporation to give to

the petitioner compensation of Rs. 5,000/- as also costs of the petition which was quantified at Rs. 2,000/-. Said amount of compensation and costs was directed to be paid within one month from the date of receipt of the writ and it was also directed that the Secretary, Welfare Department should inquire into the matter and should initiate the departmental inquiry against the erring officer/s of the respondent department for the delay in making payment and it was also directed that the Secretary should report to this court about the action on 29th November, 1998 and, thus, the learned single Judge allowed the said petition to the aforesaid extent, which is under challenge in this appeal before this court, as stated above.

At the time of hearing, learned Assistant Government Pleader Ms. Talati has produced statement before this Court and has given details of incidents with relevant annexures, copy whereof together with annexures therewith was supplied to the learned advocate for the respondent herein. According to the learned AGP Ms. Talati, the Assistant Director, Baroda has sent a claim by letter dated 18th April, 1998 which was received by the office on 24th April, 1998. The said claim was forwarded to the Government for sanctioning the same by letter dated 18th June, 1998 which was sanctioned by the Government on 18th July, 1998 and, thereafter, purchase branch of the said office forwarded the same to D.1, Surat on 24th July, 1998 for payment. Thereafter, it was submitted to the Treasury on 5th August, 1998 which has returned back from the Treasury Office with an objection that the original bills and medical papers should be submitted alongwith the bill. Thereafter, D.1 Surat has given papers to the respondent workman for preparing xerox copies of the original bills and papers of medical treatment on 21st August, 1998. Unfortunately, same were lost by the respondent workman. Thereafter, the office of D.1 Surat had contacted the Treasury and requested to pass the bill on the basis of the xerox of the original bills and medical papers. Meanwhile, the respondent workman had filed the aforesaid petition before this court in which, notice was issued by the learned single Judge which was made returnable on 20th September, 1998. Before that date, on 24th September, 1998, the respondent workman has received the payment of Rs. 22,240.00 from the appellant. These are the factual details produced by the learned AGP appearing for the appellant for perusal of this court. Therefore, it is the submission of the learned AGP for the appellant that there was no such casual approach of the department in passing the bill and claim of the respondent workman but because of the fact

that no reply was filed by the appellant before the learned Single Judge and, therefore, the learned Single Judge has passed orders for compensation as well as costs.

Learned advocate Shri Desai for the respondent workman has submitted that the respondent has arranged for the amount with great difficulty for the operation of his daughter and, therefore, the order passed by the learned Single Judge for compensation as well as the cost should not be interfered with by this court in this appeal.

We have considered the submissions made by the learned advocates for both the sides and have also considered the details submitted by Ms. Talati, the learned AGP for the appellant. The fact has remained that the daughter of the respondent workman was admitted on 22nd August, 1997 and was operated on 27th August, 1997 and she was discharged on 8th September, 1997. The appellant has advised the respondent workman vide letter dated 31st July, 1997 to incur the expenses at his own and then to raise claim for reimbursement. Thereafter, some time has been consumed by the department and that has been considered to be delay in sanctioning the amount of the bill in question and, therefore, while exercising the discretionary powers, the learned single Judge has ordered for compensation of Rs. 5,000/- and Rs. 2,000/towards costs in the facts and circumstances of the case which, as per our opinion, is quite just, reasonable and proper, on the facts and circumstances of the case. Normally, insured person is entitled to have immediate treatment and attention by the department but the appellant has failed to give immediate treatment and attention to the claim of the respondent workman and, therefore, the respondent workman was put to little difficulty, hardship and having mental agony for managing and arranging the amount for operation. So, in light of these facts, the order passed by the learned Single Judge appears to be quite just and proper in so far as it relates to the payment of Rs. 5000/- towards compensation and Rs.2000/- towards costs of the petition. We are not inclined to interfere with that part of the impugned order. However, in so far as the directions issued by the learned single Judge that the Secretary, Welfare Department should inquire into the matter and should initiate the departmental inquiry against the officers responsible for the delay in making the payment and to report to this court action taken by him on 29.11.1998 are concerned, we are of the opinion that in view of the details which have been submitted by the

learned AGP for the appellant there is no mala fide intention and deliberate delay on the part of the officers who were dealing with the said matter at the relevant point of time. On the contrary, the claim of the respondent workman was routed immediately and from time to time but there was some extent of delay since the original medical bills and papers of medical treatment were lost by the respondent workman himself. Therefore, it cannot be said that there was any intentional inaction and/or negligence on the part of the officers concerned and in such a situation, while dealing with the one office to intra office, some delay is bound to occur and for such delay, responsibility cannot be decided of any of the officers and, therefore, looking to the details which have been submitted by the learned AGP for the appellant, we are of the opinion that the direction which has been issued by the learned single Judge to the Secretary, Welfare Department for inquiring into the matter and initiate departmental inquiry against the officers responsible for delay in making payment are required to be quashed and set aside, in absence of any mala fide or intentional inaction or negligence on the part of the officers concerned. We are, therefore, of the opinion that these directions cannot be sustained and, therefore, said directions are required to be quashed and set aside.

In the result, the directions of the learned Single Judge in respect of the payment of Rs.5000/towards compensation and Rs.2000/- towards costs are confirmed and the directions of the learned Single Judge to the Secretary Welfare Department to inquire into the matter and initiate departmental inquiry against the officer responsible for delay in making payment are hereby quashed and set aside. The appellant is directed to pay total amount of Rs. 7000/- (Rs. seven thousand only) to the respondent workman as per the order dated 5th November, 1998 passed by the learned Single Judge in special civil application dated 5th November, 1998 within one month from today. The appeal stands allowed to the aforesaid extent with no order as to costs.

In view of the aforesaid order, civil application no. 9134 of 1999 shall not survive. Same shall, therefore, stand disposed of with no order as to costs.

28.10.1999.

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Vyas